

(2011) 10 MAD CK 0170
In the Madras High Court

Case No : Writ Petition (MD) No. 2383 of 2011 and M.P. (MD) No. 1 of 2011

T.R. Veerakumar

APPELLANT

Vs

The District Collector, Tirunelveli District, Tirunelveli, The
Special Tahsildar, (Land Acquisition), High Tech industrial,
Nanguneri, Tirunelveli and The Tahsildar

RESPONDENT

Date of Decision : 18-10-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 12(2)
Limitation Act, 1963 — Article 137

Citation : (2011) 10 MAD CK 0170

Hon'ble Judges : K.Chandru, J

Bench : Single Bench

Advocate : S. Siva Thilakar, for the Appellant; M. Govindan, Spl.G.P., for the
Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K.Chandru

1. The petitioner has filed the present writ petition seeking for a direction to make a reference to the Reference Court in terms of Section 18 of the Land Acquisition Act in respect of the properties situated in S.Nos.415/1 and 415/2 at Rajakalmangalam, Nanguneri Taluk, Tirunelveli District.

2. It is the case of the petitioner that the properties situated in S.Nos.415/1 and 415/2 at Rajakalmangalam belong to him. He had purchased the same through a sale deed, dated 3.7.1995. Since he was working as an Audit Officer under the Controller and Auditor General of India and serving different places, he could not follow the activities. The land was acquired for establishing an Industrial Park under the Special Economic Zone. An award was passed as early as 26.10.1998. Some of the affected land owners have raised objections regarding entitlement of payment of compensation. Therefore, a reference was made u/s 30.

3. The petitioner for the first time sent a representation on 3.3.2010 claiming that he was ignorant about the award as he was posted elsewhere. Hence he asked the Revenue Divisional Officer (Sub Collector) to inform as to what steps he should take to gain the property or to obtain the compensation. Thereafter, through his counsel, he sent a legal notice seeking for compensation. It was informed by the Tahsildar, Nanguneri that after the Award was passed, since there was dispute regarding the right to claim compensation, the matter was referred and that the compensation amount has been deposited with the Sub Court, Tirunelveli. Therefore, the petitioner can approach the Sub Court. The petitioner contended that though a reference was made and taken up in LAOP No.58 of 1999, no notice was given to him and that he is entitled for higher compensation. It is on the basis of this, he has sought for reference u/s 18 of the Land Acquisition Act.

4. It must be noted that such a reference cannot be made except in accordance with Section 18. In this context, it is necessary to refer to a judgment of the Supreme court in Mahadeo Bajirao Patil Vs. State of Maharashtra and Others, . The following passages found in paragraphs 14 and 15 may be usefully extracted below:

14..... Since, the application u/s 18 was not filed within six weeks of the receipt of notice u/s 12(2) of the Act, the High Court did not commit any error in holding that the application was barred by limitation. It was not disputed before us that the Land Acquisition Officer making a reference, or the Court considering a reference u/s 18 of the Act has no power of condonation of delay in making an application under the aforesaid section.

15.The next ground on which the High Court held the application to be barred by limitation is that in any event the appellant had knowledge of the award being made on 8-12-1994, since he filed a copy of the award as annexure to the writ petition filed on 9-12- 1994 and, therefore, should have filed the application u/s 18 of the Act within six weeks. The submission urged on behalf of the appellant relying upon the decision of this Court in Raja Harish Chandra Raj Singh v. Dy. Land Acquisition Officer² that in the instant case even if it is assumed that the appellant had knowledge of the award at least on 8-12-1994, he could make an application within six months from the date of such knowledge, would have deserved serious consideration, but for the finding recorded by us earlier that the appellant had notice u/s 12(2) of the Act and, therefore, the period of limitation for filing the application u/s 18 was six weeks from the date of receipt of the notice and not six months from the date of knowledge of the award.

5. Further, the Supreme Court in State of Karnataka Vs. Laxuman, in paragraphs 9 and 10 has held as follows:

9. As can be seen, no time for applying to the court in terms of sub-section (3) is fixed by the statute. But since the application is to the court, though under a special enactment, Article 137, the residuary article of the Limitation Act, 1963,

would be attracted and the application has to be made within three years of the application for making a reference or the expiry of 90 days after the application. The position is settled by the decision of this Court in *Addl. Spl. Land Acquisition Officer v. Thakoredas*¹. It was held: (SCC p. 414, para 3)

3. Admittedly, the cause of action for seeking a reference had arisen on the date of service of the award u/s 12(2) of the Act. Within 90 days from the date of the service of the notice, the respondents made the application requesting the Deputy Commissioner to refer the cases to the civil court u/s 18. Under the amended sub-section (3)(a) of the Act, the Deputy Commissioner shall, within 90 days from 1-9-1970 make reference u/s 18 to the civil court which he failed to do. Consequently by operation of sub-section 3(b) with the expiry of the aforesaid 90 days, the cause of action had accrued to the respondents to make an application to the civil court with a prayer to direct the Deputy Commissioner to make a reference. There is no period of limitation prescribed in sub-section (3) (b) to make that application but it should be done within limitation prescribed by the Schedule to the Limitation Act. Since no article expressly prescribed the limitation to make such application, the residuary article under Article 137 of the Schedule to the Limitation Act gets attracted. Thus, it could be seen that in the absence of any special period of limitation prescribed by clause (b) of sub-section (3) of Section 18 of the Act, the application should have been made within three years from the date of expiry of 90 days prescribed in Section 18(3)(b) i.e. the date on which cause of action had accrued to the respondent claimant. Since the application had been admittedly made beyond three years, it was clearly barred by limitation. Since, the High Court relied upon the case in *Municipal Council*² which has stood overruled, the order of the High Court is unsustainable."

This position is also supported by the reasoning in *Kerala SEB v. T.P. Kunhaliumma*³. It may be seen that under the Central Act sans the Karnataka amendment there was no right to approach the Principal Civil Court of original jurisdiction to compel a reference and no time-limit was also fixed for making such an approach. All that was required of a claimant was to make an application for reference within six weeks of the award or the notice of the award, as the case may be. But obviously the State Legislature thought it necessary to provide a time-frame for the claimant to make his claim for enhanced compensation and for ensuring an expeditious disposal of the application for reference by the authority under the Act fixing a time within which he is to act and conferring an additional right on the claimant to approach the civil court on satisfying the condition precedent of having made an application for reference within the time prescribed.

10. A statute can, even while conferring a right, provide also for a repose. The Limitation Act is not an equitable piece of legislation but is a statute of repose. The right undoubtedly available to a litigant becomes unenforceable if the litigant does not approach the court within the time prescribed. It is in this context that it has been said that the law is for the diligent. The law expects a litigant to seek

the enforcement of a right available to him within a reasonable time of the arising of the cause of action and that reasonable time is reflected by the various articles of the Limitation Act.

6. The Supreme court vide its judgment in Bhagwan Das and Others Vs. State of UP and Others, had summarised the scope of Section 18 reference. In paragraphs 28 and 29, the Supreme Court had observed as follows:

28. The following position therefore emerges from the interpretation of the proviso to Section 18 of the Act:

(i) If the award is made in the presence of the person interested (or his authorised representative), he has to make the application within six weeks from the date of the Collector's award itself.

(ii) If the award is not made in the presence of the person interested (or his authorised representative), he has to make the application seeking reference within six weeks of the receipt of the notice from the Collector u/s 12(2).

(iii) If the person interested (or his representative) was not present when the award is made, and if he does not receive the notice u/s 12(2) from the Collector, he has to make the application within six months of the date on which he actually or constructively came to know about the contents of the award.

(iv) If a person interested receives a notice u/s 12(2) of the Act, after the expiry of six weeks from the date of receipt of such notice, he cannot claim the benefit of the provision for six months for making the application on the ground that the date of receipt of notice u/s 12(2) of the Act was the date of knowledge of the contents of the award.

29. A person who fails to make an application for reference within the time prescribed is not without remedy. It is open to him to make an application u/s 28-A of the Act, on the basis of an award of the court in respect of the other lands covered by the same acquisition notification, if there is an increase. Be that as it may.

7. In the light of the above, the writ petition will stand dismissed. No costs. Consequently connected miscellaneous petition stands closed.